

EXECUTIVE SECRETARIAT

ROUTING SLIP

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	EXDIR				
4	D/ICS				
5	DDI				
6	DDA	✓			
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC				
11	IG				
12	Compt				
13	D/Pers				
14	D/OLL				
15	D/PAO				
16	SA/IA				
17	AO/DCI				
18	C/IPD/OIS				
19					
20					
21					
22					
SUSPENSE		Date			

Remarks

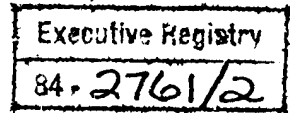
STAT

7/24/84
Date

3637 (10-81)



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



OFFICE OF GENERAL COUNSEL

JUL 20 1984

The Honorable William Casey
Director
Central Intelligence Agency
Washington, D.C. 20505

File: B-215638

Protest of: G-4, Inc.

Agency: CIA

Solicitation No.: RFP 84A-291

Dear Mr. Casey:

The protester has advised our Office that it withdraws the above-referenced protest. Our Office is therefore closing its file in this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Stephen Szeremeta".

Stephen Szeremeta
Attorney-Adviser



L-277
XF L-304

2846

ROUTING AND RECORD SHEET				Executive Registry	
SUBJECT: (Optional) Letter to Seymour Efros, Esquire Re: Procurement Document: RFP 84A-291, Agency Contact: [Redacted] 6-28, Issuing Activity: CIA				84-276111	STAT
FROM: [Redacted] C/P&SCB/OL		EXTENSION NO.		STAT	
		DATE 10 July 1984		STAT	
TO: (Officer designation, room number, and building)		DATE RECEIVED FORWARDED		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. ER 7E12 Headquarters					Reference: DDA 84-1972 cc: DDA/Registry att ER 84-2761
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					

 DCI
 EXEC
 REG

L-277

Central Intelligence Agency



Washington, D. C. 20505

06 June 1984

Seymour Efros, Esquire
Associate General Counsel
U.S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Efros:

Re: Procurement Document: RFP 84A-291
Agency Contact: [redacted] - 6-28
Issuing Activity: CIA

STAT

We are writing to acknowledge receipt of your notice of 28 June 1984 concerning the referent bid protest filed by Paul Shnitzer, Esquire, representing G-4, Incorporated, a division of the Berman Group, and Herman Miller, Incorporated. Please be advised that we are furnishing a copy of the protest to all parties involved, together with copies of this letter. We further wish to advise you that the relief sought by G-4, Inc., and Herman Miller, Inc., has already been granted by this Agency and we therefore believe that it is in the best interest of all parties that this protest be withdrawn. Representatives from our Office of General Counsel have discussed this matter with Mr. Shnitzer and he has concurred. More particularly, the CIA has requested best and final offers from all parties, including the protestant.

Although there appears to have been a misunderstanding involving G-4 officials and CIA officials concerning the course of this procurement, we believe it has now been resolved to the satisfaction of all parties and that the bid protest may properly be withdrawn. If either Mr. Shnitzer or I can be of any further assistance in this matter, please contact either of us at your convenience.

Sincerely,

[redacted signature box]

Contracting Officer

STAT

**EXECUTIVE SECRETARIAT
ROUTINGSLIP**

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	EXDIR				
4	D/ICS				
5	DDI				
6	DDA	✓			
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC				
11	IG				
12	Compt				
13	D/Pers				
14	D/OLL				
15	D/PAO				
16	SA/IA				
17	AO/DCI				
18	C/IPD/OIS				
19					
20					
21					
22					
		SUSPENSE _____ Date			

Remarks

Executive Secretary
7/2/84
Date

STAT



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

Executive Registry

84-2761

OFFICE OF GENERAL COUNSEL

B-215638

JUN 28 1984

The Honorable William Casey
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Casey:

Re: Procurement Document: RFP 84A-291

Agency Contact: - 6-28

STAT

Issuing Activity: CIA

Your representative identified above has been notified of the enclosed communication regarding the captioned procurement. Pursuant to applicable procurement regulations, we request that the parties to the procurement be notified of the protest, furnished with copies of the protest and instructed to communicate directly with CAO. We also request that a documented report responsive to the protest be furnished our Office with a copy to the protester and other interested parties. Unless we are advised to the contrary, we expect to receive the report within 25 working days.

We will forward subsequent correspondence pertaining to this protest directly to your representative.

Sincerely yours,

Ronald Berger / C2
Seymour Efros
Associate General Counsel

Enclosure

cc: Fried, Frank, Harris, Shriver & Kampelman
Counsel for G-4, Incorporated
600 New Hampshire Avenue, N.W., Suite 1000
Washington, D.C. 20037

Attention: Paul Shnitzer, Esq.

L-277
XF L-304

FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

SUITE 1000

600 NEW HAMPSHIRE AVENUE, N. W.

WASHINGTON, D. C. 20037

(202) 342-3500

CABLE "STERIC WASHINGTON"

TELEX 892406

FRIED, FRANK, HARRIS,

SHRIVER & JACOBSON

ONE NEW YORK PLAZA

NEW YORK, N. Y. 10004

(212) 820-8000

TELEX: 620223

3 KING'S ARMS YARD

LONDON, EC2R 7AD, ENGLAND

(01) 600-1541

TELEX: 887608

WRITER'S DIRECT NUMBER IS

342-3750

FELIX S. COHEN (1932-1953)

RICHARD B. BERBYMAN*

DAVID E. B. BENBAUM

JAMES D. B. BLOTT

JOHN F. BOESL

MILTON L. BENBERG

JOSEPH F. BELMAN*

HENRY A. B. B. SCHMAN

WILLIAM JOSEPHSON

MAX N. KAMPELMAN*

JAY P. KRAEMER

KENNETH S. KRAMER

ARTHUR LACARUS, JR.*

FRANCIS J. DOOLE

HARVEY L. PITT

MELVIN RISHE

MARCUS A. ROWDEN

RICHARD SCHIFFER*

JAMES H. SCHROPP*

SARGENT SHRIVER

LAWRENCE R. SICMAN

DANIEL W. SINGER*

RICHARD A. STEINWURTEL

THOMAS P. VARTANIAN

W. RICHARD WEST, JR.

ERIC J. ZAHLER

LEONARD A. ZAX

MARTIN D. GINSBURG*

STUART R. REICHAUT

PAUL SHWITZER

COUNSEL

PROFESSIONAL CORPORATION

June 26, 1984

HAND DELIVERED

The General Counsel
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Attention: Procurement Law Control Group
Room 7080

Re: Bid Protest Before Award
RFP 84A-291

Dear Sir:

On behalf of G-4, Inc. Division of the Berman Group,
("G-4"), 1601 N. Kent Street, Suite 900, Arlington, Virginia
22209, and Herman Miller Inc., ("HMI"), 1800 M Street, N.W.,
Washington, D.C. 20036, we hereby protest an award to any other
offeror under the cited solicitation for componentized systems
furniture. G-4 is an offeror under the solicitation and HMI
is the proposed manufacturer and supplier of the equipment to
be furnished. For convenience, all further references will
be solely to G-4.

8/1/87 A8:46

RECEIVED

FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN

The General Counsel
Page Two
June 26, 1984

The solicitation was issued by the Central Intelligence Agency ("CIA") on April 20, 1984. Prior to the submission of initial proposals, G-4 raised questions with the Contracting Officer concerning certain portions of the specifications. The Contracting Officer apparently recognized that the G-4 position had merit because Amendment No. 03, issued June 6, 1984, amended the specifications in a manner consistent with the G-4 position. The Amendment also stated:

Any Amendment necessary to either the technical or cost proposal as a result of the aforementioned changes must be submitted in time to arrive at the issuing office . . . not later than 3:00 p.m. prevailing Washington, D.C. time 13 June 1984.

The G-4 response to the Amendment was a letter of June 11, 1984 which stated in part:

We do not wish to submit any changes regarding price or technical information at this time.

[Emphasis added.]

Sometime after June 13, a G-4 representative inquired about the deadline for submission of best and final offers ("BAFO's"). The representative was advised that Amendment No. 3 constituted the request for BAFO's and that no further opportunity for the submission of BAFO's would be permitted.

G-4 contends that (1) it had no reason to regard Amendment No. 3 as a request for BAFO's, (2) Amendment No. 3 does not

FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN

The General Counsel

Page Three

June 26, 1984

satisfy the BAFO standards enunciated in GAO precedent and applicable procurement regulations, and (3) the response of June 11, 1984 to Amendment No. 03 clearly was not intended as a BAFO.

Since the solicitation was issued after April 1, 1984, the Federal Acquisition Regulation ("FAR") applies. FAR 15.611 states in pertinent part:

(a) Upon completion of discussions, the contracting officer shall issue to all offerors still within the competitive range a request for best and final offers.

(b) The request shall include --

(1) Notice that discussions are concluded;

(2) Notice that this is the opportunity to submit a best and final offer;

(3) A common cutoff date and time that allows a reasonable opportunity for submission of written best and final offers; and

(4) Notice that if any modification is submitted, it must be received by the date and time specified and is subject to the Late Submissions, Modifications, and Withdrawals of Proposals or Quotations provision of the solicitation (see 15.412).

[Emphasis added.]

The FAR provision is consistent with predecessor provisions in DAR (3-805.3(d)) and FPR (1-3.805(b)) as well as GAO precedent. See, for example, 48 Comp. Gen. 536 (1969), which provides (at

FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN

The General Counsel
Page Four
June 26, 1984

542) that offerors should be informed clearly that BAFO's are called for.

In this instance, G-4 did not regard Amendment No. 03 as a call for BAFO's. Indeed, it is clear that the Amendment does not meet the standards of FAR 15.611(b)(1), (2) or (4). G-4 reasonably assumed that the Amendment was simply an opportunity to modify the initial proposal to reflect the changes in the specifications. The G-4 response to Amendment makes it obvious by the use of the term "at this time", that a future opportunity to make changes in its BAFO was contemplated.

Applicable regulatory provisions and GAO precedent require that offerors in contention be given clear and specific notice of the opportunity to submit BAFO's. Although the opportunity may be provided orally, there is absolutely no basis for not specifically advising offerors that BAFO's, the final opportunity to revise proposals, are called for. See, Security Assistance Forces & Equipment OHG, B-204246, March 11, 1982, 82-1 CPD ¶229.

Amendment No. 03 can in no way be construed as a call for BAFO's. As a legal matter, it fails to comply with the minimum standards established by regulation and GAO precedent. As a practical matter, the attempt now to cut off the opportunity to submit a BAFO can do nothing more than deprive the contracting

FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN

The General Counsel
Page Five
June 26, 1984

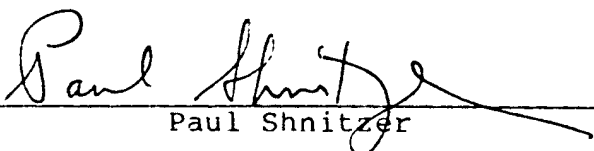
activity of proposals even more beneficial to the Government. Therefore, the effort now to cut off the competition prematurely cannot be condoned. As a deliberate and obvious violation of the rules it is arbitrary and capricious. G-4 expected to submit a BAFO which would enhance its competitive position and, at the same time, prove advantageous to the Government. Those benefits should not be denied.

The Contracting Officer should be required to call for BAFO's in a manner that comports with the regulation and with GAO precedent. G-4 requests that the Comptroller General so rule and that, in the interim, award be withheld.


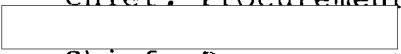
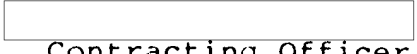
A copy of this protest is being forwarded to the Contracting Officer. G-4 reserves the right to request a bid protest conference at the appropriate time and to avail itself of other opportunities provided under the GAO bid protest procedures.

Respectfully submitted,

FRIED, FRANK, HARRIS, SHRIVER
& KAMPELMAN

By 
Paul Shnitzer

Counsel to G-4, Inc. Division of the
Berman Group and Herman Miller Inc.

cc: 
Chief, Procurement Management Staff

Chief, Procurement Division

Contracting Officer

25X1

25X1

25X1